



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

(petitioner)

DECISION

MDV-20/56405

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2003, under Wis. Stats. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Fond du Lac County Dept. of Social Services in regard to valuation of property divested, a hearing was held on February 21, 2003, at Fond Du Lac, Wisconsin.

The issue for determination is what value should be used for real estate that both parties agree was divested for Medical Assistance (MA) purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Represented by:

Atty. Ronald Hammer
104 South Main Street
P.O. Box 1577
Fond du Lac WI 54936-1577

Respondent:

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Debra Gohlke, ESS
Fond Du Lac County Dept Of Soc Serv
87 Vincent Street
Fond Du Lac, WI 54935-4595

Administrative Law Judge:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. The Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Fond du Lac County.
2. An application for institutional MA was filed on behalf of the Petitioner on or about December 19, 2002. The application was denied due to divestment during the 36-month look back period.

3. In May 2001 the Petitioner transferred ownership of her home in Town of Eldorado to her daughter and POA. For the purpose of determining the amount of the divestment the county agency valued the home at \$ 95800.00. It based this value on the fair market value found in the Fond du Lac County real estate tax records for 2001. Exhibit # 7.
4. The county agency also determined that the Petitioner had gifted ownership of a small mobile home in Arizona to a nephew. The county agency used a value of \$ 1000.00 for this transfer and based this valuation on an estimate of value.
5. Based on the two transfers noted at Findings 3 & 4 and valuations of the two properties totaling \$ 96800.00 the county agency concluded that the Petitioner was ineligible for institutional MA for a period of 22 months beginning May 2001 and ending February 2003.
6. The Petitioner's representatives had the Town of Eldorado property appraised in November 2002. The appraisal concludes that the value of that property was \$ 87,000 at the time of transfer. That valuation is based on comparable sales.

DISCUSSION

A single person cannot be eligible for institutional/nursing home MA if s/he has nonexempt assets exceeding \$2,000. To prevent a person from simply giving away his or her assets when the specter of nursing home costs appears, the MA program has developed policies to limit eligibility in the event of such giveaways, or prohibited "divestments." The statutes define a divestment:

(b) *Noninstitutionalized individuals.* Except as provided in sub. (8), if a noninstitutionalized individual or his or her spouse, or another person acting on behalf of the noninstitutionalized individual or his or her spouse, transfers assets for less than fair market value on or after the noninstitutionalized individual's look-back date, the noninstitutionalized individual is ineligible for medical assistance for the following services for the period specified under sub. (3):

1. Services that are described in 42 USC 1396d (a) (7), (22) or (24).
2. Other long-term care services specified by the department by rule.

§ 49.453(2)(a), Wis. Stats.; MA Handbook, Appendix 14.2.1 (01-01-02).

A divestment or divestments made within 36 months (60 months if the divestment is to an irrevocable trust) before an application for institutional MA may cause ineligibility for that type of MA. *§ 49.453(1)(f), Stats.; MA Handbook, App. 14.3.0.* The ineligibility is only for nursing home care; divestment does not impact on eligibility for other medical services such as medical care, medications, and medical equipment (all of which are known as "MA card services" in the parlance). The penalty period is specified in *§ 49.453(3), Stats.*, to be the number of months determined by dividing the value of property divested by the average monthly cost of nursing facility services. *MA Handbook, Appendix 14.5.0.* Effective April 1, 2002, the average nursing home cost to a private pay patient is \$4,292.

The issue here is what the value should have been used in determining the amount of the divestment. The practical affect of the difference as to the length of the divestment in the values is two months. In addition to arguing that the valuation of the Eldorado property should be \$ 87,000.00 the Petitioner's representatives also argue that the transfer of the Arizona property was not a divestment as the property was transferred in exchange for the nephew paying a mobile home park rental fee of \$ 1800.00. I am not, however, going to address the mobile home transfer as the \$ 1000.00 value does not affect the divestment

calculation because of the rounding down of any fraction of a month when calculating a divestment period. *MA Handbook, Appendix 14.5.0.*

As noted in the Findings, the county agency assessed the value of the Eldorado property using county tax records showing that the fair market value of the subject property for the year 2001 was \$ 95800.00. The county agency also notes that the appraisal was made in November 2002, about a year and a half after the transfer. The Petitioner maintains that the property was in a state of disrepair to the extent that the value should be \$87,000.00. The Petitioner's daughter testified that the house is old and the original homestead. It has two stories. The second floor had not been occupied for many years at the time of transfer and was extensively damaged from a leaking roof and/or insect damage. She also noted that the septic system is 50 years old and in need of replacement or upgrading.

I am concluding that the Petitioner evaluation of the Eldorado property is the more realistic valuation. The testimony of the Petitioner's daughter as to the condition of the property was credible. The valuation is supported by the appraisal which is based on comparable sales in the Eldorado Township. There is no indication that the county tax records were based on any physical inspection of the property. Thus the length of the divestment is reduced by two months.

CONCLUSIONS OF LAW

That the value of the Eldorado property divested in this case was \$ 87,000.00 thus the period of the divestment is reduced by two months.

NOW, THEREFORE, it is **ORDERED**

That the matter be remanded to the county agency with instructions to take the administrative steps necessary to reduce the length of the divestment period involved here by two months. If the county agency takes any negative action it must issue a Notice of Decision stating the reason for its negative action. The county agency must take these steps within 10 days of the date of this decision but in no event any later than Monday April 21, 2003.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in § 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in § 227.53 of the statutes.

Given under my hand at the City of
Milwaukee, Wisconsin, this 9th day of
April, 2003

/sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
4-5/DDF